

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRIDGETTE CONWAY,
individually and on behalf of
D.C., a minor,

Plaintiff,

v.

Civ. No. 19-842 JAP/KK

JAG TRANSPORTATION, INC.,
ELISARA TAITO, and JOHN DOE,

Defendants.

MEMORANDUM OPINION AND ORDER

In their MOTION TO CONSOLIDATE AND STAY (Doc. 12), filed September 26, 2019, Defendants Jag Transportation, Inc. and Elisara Taito seek to consolidate this case (“*Conway*”) under Rule 42 of the Federal Rules of Civil Procedure with another case pending before the Court, *Joycelynn Bahe et al. v. Jag Transportation, Inc. et al.*, Civ. No. 1:19-cv-00218 JB/GBW (“*Bahe*”). Doc. 12. at 1. Defendants have filed a motion seeking the same relief in the *Bahe* case. *See Bahe*, MOTION TO CONSOLIDATE AND STAY (Doc. 40). In addition, Defendants seek an order staying this case during the pendency of ongoing NTSB and State of New Mexico investigations into the August 30, 2018 tragic accident that is the subject of both lawsuits. Doc. 12 at 4.

The parties in the *Bahe* case do not oppose consolidation of both cases. *See Bahe*, Doc. 40 at 4; *Conway*, Doc. 12 at 4. To date, Plaintiff in the *Conway* case has not responded to the motion to consolidate. On October 29, 2019, Defendants filed a notice of completion of briefing in which they state that Plaintiff did not contact them to request an extension to file a response. *See Bahe*, NOTICE OF COMPLETION OF BRIEFING ON MOTION TO CONSOLIDATE (Doc. 41). Under this district’s Local Rule 7.1(b), “[t]he failure of a party to file and serve a response in

opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M.LR-Civ. 7.1(b). The Court will therefore construe Plaintiff’s lack of a response to the motion to consolidate in the *Conway* case as consent to its granting.

Notwithstanding the *Conway* Plaintiff’s failure to respond, the Court finds that it is appropriate to consolidate both cases under Rule 42. Rule 42(a)(2) provides that the Court may consolidate cases if they “involve a common question of law or fact.” Fed. R. Civ. P. 42(a)(2). Such is the case here. Both cases arise out of an August 30, 2018 accident involving a Greyhound bus in which the *Bahe* and *Conway* plaintiffs were passengers and a commercial truck operated by Defendant Taito and owned by Defendant Jag. The *Bahe* case also names Bridgestone Americas Tire Operations LLC (“Bridgestone”) as a defendant. Apart from the claims against Bridgestone in the *Bahe* case, the plaintiffs in both cases assert the same claims against the other defendants: negligence against Defendants Taito and Jag; vicarious liability against Defendant Jag; and negligent infliction of emotional distress against Defendants Taito and Jag. *See Conway, COMPLAINT FOR PERSONAL INJURIES* (Doc. 1-1); *Bahe, PLAINTIFFS’ FIRST AMENDED COMPLAINT FOR WRONGFUL DEATH, PERSONAL INJURIES, LOSS OF CONSORTIUM AND PUNITIVE DAMAGES* (Doc. 12). In light of this overlap in the parties and the causes of action, the Court concludes that consolidation is appropriate.

In their motion, Defendants also seek to stay the *Conway* case during the pendency of the NTSB and State of New Mexico investigations into the accident. Doc. 12 at 4. The Court notes that the *Bahe* case has been stayed since July 26, 2019 for this same reason. *See Bahe, STIPULATED ORDER GRANTING DEFENDANT JAG TRANSPORTATION, INC.’S UNOPPOSED MOTION AND MEMORANDUM BRIEF TO STAY CIVIL PROCEEDINGS* (Doc. 39). The Court will stay the *Conway* case during the pendency of the NTSB and state

investigations. The parties are directed to notify the Court within 10 days of the completion of the NTSB and state investigations so that the stay may be lifted.

IT IS THEREFORE ORDERED THAT:

1. Defendants' motions to consolidate and stay (*Bahe* (Doc. 40), *Conway* (Doc. 12)) are granted; the *Bahe* case, Civ. No. 1:19-cv-00218-JAP-KK, will be the lead consolidated case; and the parties are directed to file all future filings in the lead case only.
2. The Clerk's Office is hereby directed to reassign *Bahe* such that the case number is 1:19-cv-00218-JAP-KK.
3. The consolidated case is stayed during the pendency of the NTSB and State of New Mexico investigations.



SENIOR UNITED STATES DISTRICT JUDGE